

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC. FOR A
WAIVER.

CASE NO. 16-1096-EL-WVR

FINDING AND ORDER

Entered in the Journal on March 8, 2017

I. SUMMARY

{¶ 1} The Commission grants Duke Energy Ohio, Inc.'s request for waiver from the requirement of Ohio Adm.Code 4901:1-18-06(A)(2) to provide residential customers with personal notice on the day of disconnection and permits Duke Energy Ohio, Inc. to commence a pilot program using an alternative notification process.

II. PROCEDURAL HISTORY

{¶ 2} Duke Energy Ohio, Inc. (Duke or the Company) is an electric distribution utility (EDU) as defined by R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} On May 13, 2016, Duke filed an application for a temporary waiver of Ohio Adm.Code 4901:1-18-06(A)(2), which requires the utility to provide a residential customer with personal notice on the day of disconnection. According to Duke, in order to disconnect service, and meet the requirements of Ohio Adm.Code 4901:1-18-06(A)(2), the Company currently must send a technician to the property, where that technician can, impliedly, give the customer a final opportunity to make a payment to avoid disconnection. However, Duke notes that with advancements in technology the company is currently able to remotely disconnect and reconnect electric service for customers with advanced metering infrastructure (AMI). Thus, Duke requests a waiver of the requirement to provide physical notice on the day of disconnection and instead seeks to start a three-year pilot program through which the company will use alternative efforts to inform customers of possible disconnections.

{¶ 4} Duke avers that the waiver, if granted, will not increase the number of eligible disconnections and that the Company will have safeguards in place to ensure customers are effectively notified. Specifically, among other things, Duke states that on the day of disconnection it will text and/or telephone message a notification to the customers and include a link where the customer can make payment. Additionally, the Company will make an automated call to the customer to provide further notification. Duke asserts it will provide bill inserts to inform customers that it will no longer be making visits to the premises on the day of disconnection. According to the Company, it will still visit the premises of customers who do not have AMI or who qualify as "Critical Care" customers. Duke submits that it will collect data regarding the effectiveness of the new notification methods, including the texts and calls, and provide that information to Staff. Duke believes the new methods are more efficient and provide more notice to customers and, therefore, requests the Commission grant the waiver.

{¶ 5} Motions to intervene and initial comments were filed by Ohio Partners for Affordable Energy (OPAE), the Ohio Consumers' Counsel (OCC), Communities United for Action (CUFA), and Pro Seniors, Inc. (PSI).

{¶ 6} On July 22, 2016, in response to the initial comments, Duke filed an amended application. Duke's amended application shortens the pilot program from three years to two years. Duke also proposes that, in addition to what is described in its initial application, it will send customers a telephone or text message two business days before a scheduled disconnect. Thus, the Company's proposed notifications would be: a text or phone message the day of disconnection; a text or phone message two business days before disconnection; an extension of the mailed 10-day disconnection notice from only during the winter heating season to year-round; and a one-time bill insert informing customers of the change in process. Further, compared to what it submitted in its original application, Duke proposes to expand the data it would collect and share with Staff during the term of the pilot.

{¶ 7} By Entry on August 5, 2016, the attorney examiner issued a procedural schedule. August 19, 2016, was established as the deadline to file motions to intervene and the deadline to file initial comments. Reply comments were to be filed by September 2, 2016.

{¶ 8} In addition to the previous motions filed by OPAE, OCC, CUFA, and PSI, the City of Cincinnati (Cincinnati) also filed a motion to intervene. No one filed any memoranda contra the motions to intervene. Accordingly, the motions should be granted.

III. DISCUSSION

{¶ 9} R.C. 4933.122 provides that an electric company shall not terminate service without first providing reasonable notice. Additionally, a company shall not terminate service if doing would be especially dangerous to the health of a consumer. The procedures for disconnecting electric service are outlined in Ohio Adm.Code 4901:1-18-06. Duke seeks a waiver of Ohio Adm.Code 4901:1-18-06(A)(2), which provides that:

On the day of disconnection of service, the utility company shall provide the customer with personal notice. If the customer is not at home, the utility company shall provide notice to an adult consumer. If neither the customer nor an adult consumer is at home, the utility company shall attach written notice to the premise in a conspicuous location prior to disconnecting service.

{¶ 10} Duke previously applied for a waiver of Ohio Adm.Code 4901:1-18-06(A)(2), among other rules, in 2010. *In re Duke Energy Ohio, Inc.*, Case No. 10-249-EL-WVR (2010 Waiver Case). In that application, Duke proposed to notify customers via text message or electronic message that a disconnection was imminent and that customers would opt in to what type of notification method they preferred. The Commission denied Duke's request for a waiver, stating that, without personal notification, customers may not be aware of a pending disconnection. The Commission further stated it may be willing to consider alternative notification methods in the future. *2010 Waiver Case*, Entry (June 2, 2010) at 7-8.

{¶ 11} Thereafter, in 2015, the Commission approved an application from Ohio Power Company (AEP) for a waiver of the requirements of Ohio Adm.Code 4901:1-18-06(A)(2). *In re Ohio Power Company*, Case No. 13-1938-EL-WVR (*AEP Waiver Case*). In that Entry, the Commission permitted AEP to begin a two-year pilot program for AEP's approximately 132,000 residential customers with AMI. The Commission determined that AEP's proposal to provide two written notices and a telephone call 48 hours in advance of disconnection constituted reasonable notice of disconnection. *AEP Waiver Case*, Entry (March 18, 2015).

{¶ 12} Comments were filed by Cincinnati, OPAE, Staff, and, jointly, by OCC, CUSA, and PSI (collectively, the Consumer Groups). Reply comments were filed by Duke, Cincinnati, OPAE, and the Consumer Groups. Cincinnati filed a motion for leave to file sur-reply comments, for which Duke filed a memorandum contra. For lack of good cause shown, the motion is denied.

A. *Comments of OPAE*

{¶ 13} On June 2, 2016, OPAE filed a motion to dismiss Duke's application for waiver. OPAE notes that Duke previously filed for a waiver of the notice requirement in the 2010 *Waiver Case*. According to OPAE, in the previous case, Duke was ordered to have discussions with Staff regarding alternative notice procedures. OPAE states there is no evidence that Duke consulted with Staff and that the current application is substantively the same as the previous application. Further, OPAE contends that because the Commission approved a waiver and an alternative notification pilot program in the *AEP Waiver Case*, Duke's current waiver request is now redundant and not necessary. Therefore, OPAE argues the motion should be dismissed based on the doctrines of res judicata and collateral estoppel. OPAE reiterated its arguments in its comments filed August 19, 2016.

{¶ 14} In its memorandum contra and its reply comments, Duke avers OPAE's arguments are without merit. Duke submits the current application is substantially different than its application in the 2010 *Waiver Case*. Duke asserts the previous request

sought multiple waivers, applied to only 250 residential customers, and offered different disconnection notification options. Duke also expresses that the Commission specifically stated it may be amenable to a waiver of personal notification in the future. The Company also contends there was no requirement that Duke consult with Staff prior to making a new filing. Duke further argues there is no merit in OPAE's contention that Duke should not have a notification waiver pilot program because AEP already has one. Duke asserts the utilities serve different areas, have different customers, and are offering different programs. According to the Company, the two programs are not the same and would be obtaining different data and, thus, there is no reason to preclude Duke from initiating its pilot.

B. Comments of the Consumer Groups

{¶ 15} In its comments, the Consumer Groups submit that Duke has not demonstrated good cause as to why the waiver should be granted. The Consumer Groups argue that in-person notification is the last and best opportunity for customers to avoid disconnection and taking that away could jeopardize the health and welfare of citizens. Additionally, the Consumer Groups contend that the AEP pilot program is not complete and early data shows there is a higher rate of disconnections in the areas not receiving in-person disconnection notification. They assert that phone calls or text messages are not an effective means of communication and are more likely to be ignored as a possible scam, or, conversely, could open up customers to be scammed. The Consumer Groups also aver that many details of the program are vague and unclear. According to them, it is not clear what information Duke will collect and report to Staff and nor is it clear whether Duke will call customers, text customers, or both. Further, as Duke also provides natural gas to some customers, the Consumer Groups submit it is unclear if the waiver applies to those customers as well, and if the waiver restricts customers' ability, pursuant to Ohio Adm. Code 4901:1-18-09, to choose which service should be disconnected. The Consumer Groups also argue that if Duke can connect and disconnect remotely, the Company should not charge to reconnect electric service to customers with advanced meters. The Consumer Groups state the associated fee is to cover the expense of having an employee visit the premises to

reconnect service. According to the Consumer Groups, if Duke can now remotely reconnect customers, there is no need for the Company to charge customers.

{¶ 16} According to Duke, its proposed program provides more notifications than before and gives customers multiple opportunities to avoid disconnection. In its reply, Duke asserts the Consumer Groups discount the numerous opportunities customers have to avoid disconnection for nonpayment and they ignore the customers' obligation to timely pay their utility bill. Duke further states the Consumer Groups ignore the pilot program's exception for critical care customers. Also, according to Duke, the Consumer Groups do not consider the enhanced speed at which customers can now be reconnected. In sum, Duke concludes its proposed notification process will not result in more disconnections and will not endanger any residential customers.

{¶ 17} Additionally, Duke asserts the notifications it will give customers is clearly stated in its application, as is the information that it intends to share with Staff. For dual customers that receive both gas and electric service from Duke, the Company contends it is not altering the customers' right to choose which service to disconnect. Duke states it will obtain an affirmative response regarding the customers' choice during its attempts to make contact and provide notice and, in doing so, will continue to comply with Ohio Adm.Code 4901:1-18-09. As to the Consumer Groups' concerns about reconnection fees, Duke avers they are without merit. According to Duke, it currently does not charge the higher reconnection fee for customers that are reconnected remotely and it is committed to maintaining this practice during the pilot.

C. *Comments of Cincinnati*

{¶ 18} Cincinnati asserts that the requirement to provide personal notification of disconnection protects the city's most vulnerable residents and should not be waived. The city contends that phone calls or text messages are not a dependable means of contact and thus not an adequate substitute for personal notification. According to Cincinnati, residents facing disconnection for nonpayment are more likely to lack dependable cell phone service

or lack internet capabilities on their phones. Cincinnati further states that while Duke avers that its representatives do not usually make in-person contact, the posting of a written notice in a conspicuous place is still more effective than a text message or voice mail.

{¶ 19} Duke replies that by increasing the number of notifications it is increasing the opportunities for customers to prevent disconnection. Further, Duke asserts that it started a campaign to text or call customers on the day of disconnection and has experienced an increase in day-of disconnection cancellations since starting the campaign. Thus, Duke argues it expects its proposed notification methods to be more effective than before.

D. *Comments of Staff*

{¶ 20} Staff comments that it finds Duke's proposed alternative methods of notification provides reasonable notice to customers and would be appropriate for review on a two-year pilot basis. Further, Staff recommends that Duke work with Staff regarding the content of notifications, text messages, and voice messages that will be sent to customers. Staff also requests that Duke collaborate with Staff regarding the substance, format, and timing of the data Duke will provide. Duke replies that it does not oppose any of Staff's recommendations.

{¶ 21} In reply, OPAE submits that Staff does not consider that AEP already has a similar program. According to OPAE, Staff ignores any data it has received from the AEP pilot program and does not discuss why a second pilot program is necessary, to which Cincinnati, in its reply, agrees. The Consumer Groups also argue that Staff's recommendation should be discounted. The Consumer Groups aver that Staff's recommendations lack analysis or commentary and ignore previous contentions by the intervenors. Thus, the Consumer Groups assert Staff has limited basis for its support of Duke's request.

IV. CONCLUSION

{¶ 22} Upon consideration of the alternative notification process proposed by Duke, the Commission finds the request for temporary waiver of Ohio Adm.Code 4901:1-18-06(A)(2), as amended, is reasonable. Duke's proposed alternative notification process includes: a text and/or phone message the day of disconnection; a text and/or phone message two business days before disconnection; an extension of the mailed 10-day disconnection notice from only during the winter heating season to year-round; the 14-day notice, as required under Ohio Adm.Code 4901:1-18-06; and a one-time bill insert informing customers of the change in process. We find this notification system provides reasonable notice to customers, meets the requirements of R.C 4933.122, and is consistent with the Commission's policies to prevent injury to residential customers by helping customers maintain their utility service. While the Consumer Groups and Cincinnati have concerns that the alternative notification will endanger customers, we find the messages two business days before disconnection, and the day of disconnection, give customers sufficient notice, time, and opportunity in order to make payment or payment arrangements with Duke. Further, we note that critical care customers will be excluded from the pilot program. Additionally, for customers that are disconnected, the ability for Duke to remotely and immediately reconnect service benefits customers. In finding the notification reasonable, we note this is consistent with our findings in the *AEP Waiver Case*. Here, Duke increases the amount of notification from AEP's program by adding a day-of message to customers.

{¶ 23} We are not persuaded by OPAE and the Consumer Groups' argument that our previous denial of Duke's waiver request precludes our current approval. In that case, we specifically noted that we were willing to consider an application for waiver in the future. *2010 Waiver Case*, Entry (June 2, 2010) at 8. Further, since then, as discussed, we approved AEP's request for waiver of the personal notification requirements. *AEP Waiver Case*, Entry (March 18, 2015). As to AEP's waiver and pilot program, we do not find that it prevents us from approving Duke's request for a pilot program. AEP and Duke are separate utilities,

serving different customers, in different geographic regions of Ohio, and offering different pilot programs. The resulting data from both programs could each be uniquely beneficial.

{¶ 24} In approving the temporary waiver, we direct Duke to work with Staff on the content of the various messages to ensure clarity to the customers and compliance with all rules. Additionally, Duke must provide Staff with copies of the proposed bill inserts at least 14 days in advance of mailing the notice to customers in the pilot program. As to the Consumer Groups' concerns that the text and phone messages could make customers susceptible to scams, we find that Duke has appropriate authenticating steps to sufficiently protect customers. However, Duke and Staff should consider the potential for scams as they work together on the content of the customer messages. We also find Duke has sufficiently outlined the data it intends to collect and share with Staff. Accordingly, Duke shall work with Staff on the substance, format, and timing of the data provided monthly. Regarding the Consumer Groups' assertion that Duke should not charge a reconnection fee for remote reconnections, we find Duke's commitment to not charge the higher reconnection fee is appropriate. However, we direct Staff to examine the fee and its appropriateness in Duke's upcoming distribution rate case. *See In re Duke Energy Ohio, Inc.*, Case No. 17-32-EL-AIR, et al. Similarly, as to the Consumer Groups' uncertainties about Duke's dual gas and electric customers, Duke is still obligated to comply with Ohio Adm.Code 4901:1-18-09, which allows customers to choose which service is disconnected.

{¶ 25} Accordingly, Duke's request for a temporary waiver of Ohio Adm.Code 4901:1-18-06(A)(2), as described in its application, as amended, is approved. Duke may commence the remote disconnection pilot on May 1, 2017, and continue through May 1, 2019, or until otherwise ordered by the Commission. Should Duke want to continue or expand this pilot, the Company must file a request with the Commission and notify the parties to this proceeding by March 1, 2019.

V. ORDER

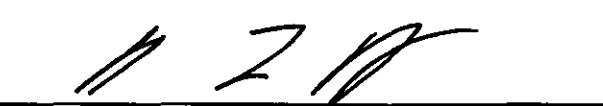
{¶ 26} It is, therefore,

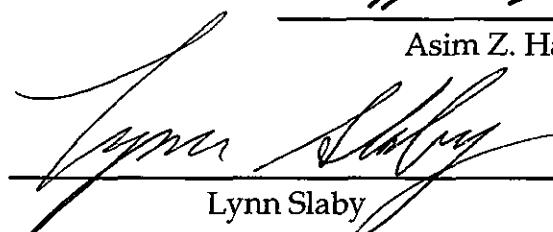
{¶ 27} ORDERED, That the motions to intervene filed by OPAE, OCC, CUFA, PSL, and Cincinnati be granted. It is, further,

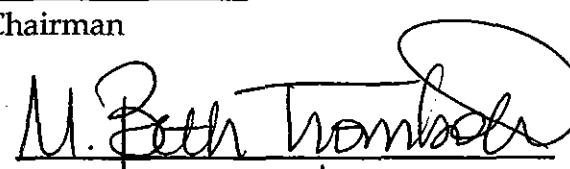
{¶ 28} ORDERED, That Duke's motion for waiver of Ohio Adm.Code 4901:1-18-06(A)(2) be granted, as discussed herein, provided Duke complies with the Commission's directives as set forth in this Finding and Order. It is, further,

{¶ 29} ORDERED, That a copy of this Finding and Order be served upon all parties of record.

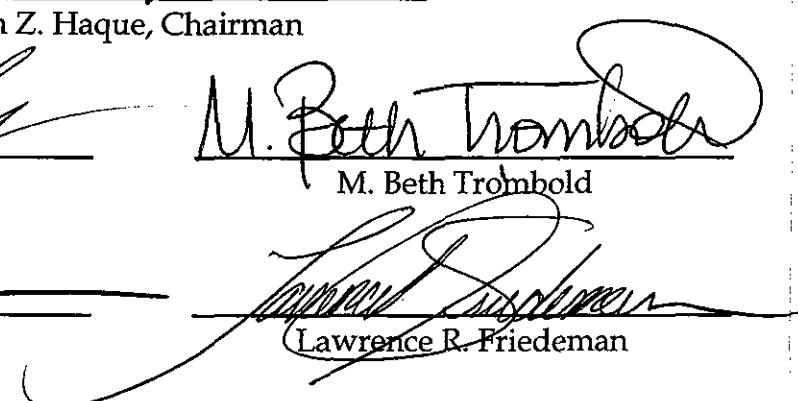
THE PUBLIC UTILITIES COMMISSION OF OHIO


Asim Z. Haque, Chairman


Lynn Slaby

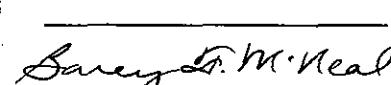

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Entered in the Journal
MAR 08 2017


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